

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

GULF UNDERWRITERS INSURANCE	:	
COMPANY,	:	
Plaintiff,	:	CIVIL ACTION NO.
	:	3:03cv1277 (SRU)
v.	:	
	:	
THE HURD INSURANCE AGENCY,	:	
Defendant.	:	

RULING ON MOTION TO INTERVENE

Gulf Underwriters Insurance Company (“Gulf”) issued an “Errors and Omissions” policy to The Hurd Insurance Agency (“Hurd”). Hurd now faces a number of lawsuits, including one brought by the Philadelphia Airport Taxi Service (“Philadelphia Taxi”), for which Gulf’s policy possibly offers coverage. Gulf is provisionally defending these actions, but also seeks a declaratory judgment from this court that Gulf is not obligated to defend or indemnify Hurd. Hurd has not defended the declaratory judgment lawsuit and is now in default. Gulf seeks a default judgment. Such a judgment, if issued, would relieve Gulf of its coverage obligations and would apparently bar the plaintiffs in the underlying lawsuits, including Philadelphia Taxi, from any meaningful recovery. Philadelphia Taxi, in order to keep alive the possibility of recovery, asks for permission to intervene in this lawsuit to defend against entry of a declaratory judgment of non-coverage.

Declaratory judgment is a typical way for an insurance company to ascertain its coverage obligations before undertaking the expense of litigation on behalf of an insured. A plaintiff with a claim against the insured may often have an interest in such a declaratory action because insurance coverage may provide the plaintiff with the best chance of recovery in the event it obtains a judgment against the insured. Ordinarily such a plaintiff’s interests will be protected by

the insured who has an equal, if not greater, interest in receiving insurance coverage.

In this case, however, Hurd appears to have no interest in defending the declaratory judgment action, possibly because it is insolvent. The result is a potential unfairness to Philadelphia Taxi and other similarly situated plaintiffs. It may be that Philadelphia Taxi has a meritorious claim against Hurd, and it may be that Gulf should indemnify Hurd for that claim,¹ but because Hurd is not defending Gulf's declaratory judgment action, it is possible that Gulf will escape liability without ever having the issue heard on the merits.

The possible unfairness of a default declaratory judgment in this case raises the possibility that I should entirely refuse jurisdiction. A district court is permitted, not required, to exercise jurisdiction over a case brought under the Declaratory Judgment Act. 28 U.S.C. § 2201(a) (“any court of the United States . . . *may* declare the rights and other legal relations of any interested party seeking such declaration.”) (emphasis added). The Second Circuit has approved at least five factors for consideration when deciding whether to exercise jurisdiction over a declaratory judgment action:

- (1) whether the judgment will serve a useful purpose in clarifying or settling the legal issues involved;
- (2) whether a judgment would finalize the controversy and offer relief from uncertainty;
- (3) whether the proposed remedy is being used merely for “procedural fencing” or a “race to res judicata;”

¹ The merits, of course, are undecided at this point. It is possible that Philadelphia Taxi does not have a valid claim against Hurd or that Gulf does not owe coverage for the claim.

- (4) whether the use of a declaratory judgment would increase friction between sovereign legal systems or improperly encroach on the domain of a state or foreign court; and
- (5) whether there is a better or more effective remedy.

Dow Jones & Co. v. Harrods Ltd., 346 F.3d 357, 360 (2d Cir. 2003).

A declaratory judgment would finalize the controversy and offer relief from uncertainty, something that Gulf understandably desires. Nevertheless, I am concerned that issuing a default judgment (a) will not clarify or resolve any legal issues on the merits and (b) will give Gulf an unfair procedural advantage in the other proceedings.² That being said, the proposed intervention by Philadelphia Taxi offers a solution that answers all concerns. If Philadelphia Taxi intervenes and defends Hurd's interest, then Gulf will be able to litigate to final judgment, giving it certainty, while Philadelphia Taxi will be ensured that any judgment will be on the merits. The only question, then, is whether Philadelphia Taxi may intervene.

Philadelphia Taxi seeks permissive intervention pursuant to Federal Rule 24(b)(2), which states:

Upon timely application anyone may be permitted to intervene in an action: . . .
(2) when an applicant's claim or defense and the main action have a question of law or fact in common.

In interpreting the requirements of Rule 24(b), the words "claim or defense" have not been read in a technical sense. *See Brooks v. Flagg Brothers, Inc.*, 63 F.R.D. 409, 415 (S.D.N.Y. 1974). A party need not have a direct interest in the subject of the litigation, though something more than a

² I do not mean to suggest that Gulf has done anything inappropriate in seeking a declaratory judgment, an entirely appropriate action. I only mean that the current circumstances of the case have given rise to the possibility of unfairness.

general interest is required. *Continental Casualty Co. v. SSM Group Inc.*, 1995 WL 422780, *5 (E.D. Pa. July 13, 1995). If common issues of law or fact exist, the decision whether to allow intervention is left to the district court's discretion.

In this case, Philadelphia Taxi has a "claim" on Gulf's insurance coverage. This is not a "claim" in the sense of a cause of action, because Philadelphia Taxi does not have a judgment against Hurd. Nevertheless, Philadelphia Taxi has a sufficiently particularized interest in this action, to give it a "claim" within the meaning of Rule 24(b)(2). Indeed, the underlying action brought by Philadelphia Taxi against Hurd is explicitly identified in the amended complaint as one of the claims that Gulf asserts it should not have to defend and indemnify. Accordingly, I conclude that Rule 24(b)(2) permits Philadelphia Taxi's intervention.³

Philadelphia Taxi will be permitted to intervene in this case for the purpose of litigating Hurd's defense. Philadelphia Taxi's motion to intervene (doc. # 36) is GRANTED.

It is so ordered.

Dated at Bridgeport, Connecticut, this 16th day of December 2004.

/s/ Stefan R. Underhill
Stefan R. Underhill
United States District Judge

³ A more difficult question, that I need not reach, is whether Philadelphia Taxi would be permitted to intervene as of right, under Rule 24(a). *Compare In re Infiltrator Systems, Inc.*, 1998 WL 1574648 (D. Conn. Nov. 6, 1998) (creditor committee could not intervene in declaratory judgment proceeding between debtor and insurance company), *with Uni Storebrand Insurance Co. v. Star Terminal Corporation*, 1997 WL 391125 (S.D.N.Y. July 11, 1997) (allowing intervention in declaratory judgment action by insured's judgment creditor when insured had not defended itself).